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October 16, 2012

The Honorable Judge Susan Richard Nelson
Warren E. Burger Federal Building and U.S. Courthouse
316 North Robert St.; Ste. 774
St. Paul, MN 55101

Re: Brodkorb v. State of Minnesota, the Minnesota Senate, and Cal Ludeman
Court File No. 12-cv-01958 (SRN/AJB)

Dear Judge Nelson:

With permission from your Deputy, Joan, we are enclosing a letter from the Attorney General's office of October 15, 2012 for your consideration. As directed by the Court at oral argument on the Rule 12 Motions, we brought your concerns to the attention of the Attorney General's office. The letter, directed to the attention of Dayle Nolan, is the Attorney General's response.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Christopher J. Harristhal". The signature is fluid and cursive, with "Christopher J." on top and "Harristhal" below it.

Christopher J. Harristhal, for
Larkin Hoffman Daly & Lindgren Ltd.

Direct Dial: (952) 896-3312
Direct Fax: (952) 842-1710
E-mail: charristhal@larkinhoffman.com

Enclosures

cc: Philip Villaume
Greg Walsh

1426838.1



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

October 15, 2012

SUITE 1100
445 MINNESOTA STREET
ST. PAUL, MN 55101-2128
TELEPHONE: (651) 282-5700

Via E-mail and United States Mail

Ms. Dayle Nolan
Larkin Hoffman Daly & Lindgren Ltd.
7900 Xerxes Avenue South, Suite 1500
Minneapolis, MN 55431-1194

RE: *Michael Brodkorb v. State of Minnesota, the Minnesota Senate,
and Cal Ludeman, individually*
File No. 12-CV-01958 (SRN/AJB)

Dear Ms. Nolan:

You have advised me that the Court recently inquired about this Office's position concerning the pending motion you have brought pursuant to Federal Rules of Civil Procedure 12(f) and 21 to strike all references to the "State of Minnesota" from Plaintiff's Complaint. I ask that you submit this letter to the Court in response to its inquiry.

As you know, you are defending against all the claims made in Plaintiff's Complaint, and Plaintiff's counsel has been so advised. See attached letter dated August 9, 2012. As part of such defense, you have brought the above-referenced motion to strike references to the "State of Minnesota" from the Complaint. This Office agrees that references to the "State of Minnesota" should be stricken from the Complaint. The Complaint alleges no claims, nor seeks any relief, against the separate entity of the State of Minnesota. See Compl.; Defs. Mem. Supp. Mot. to Strike & Misjoinder at 2, 5-8.

In addition, for all the reasons you previously have raised with the Court, the State could not be a proper party to this action. *See, e.g.,* Defs. Mem. Supp. Mot. Dismiss at 2-3 (recognizing the State is not a proper party to a § 1983 claim); Defs. Mem. Supp. Mot. to Strike & Misjoinder at 5 (explaining "[t]here are no allegations asserted against the State of Minnesota, and no allegations that could be made against it."); Defs. Reply Mem. Supp. Mot. to Strike & Misjoinder at 2 (recognizing that if respondeat superior liability applies to this matter, "then the Senate, not the State of Minnesota, would be liable").

Ms. Dayle Nolan
October 15, 2012
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Accordingly, this Office agrees that your pending Rule 12(f) and 21 motion to strike all references to the "State of Minnesota" from the Complaint should be granted.

Very truly yours,


ALAN I. GILBERT
Solicitor General
(651) 757-1450 (Voice)
(651) 282-5832 (Fax)

Enclosure

AG: #3100030-v1



STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

August 9, 2012

SUITE 1100
445 MINNESOTA STREET
ST. PAUL, MN 55101-2128
TELEPHONE: (651) 282-5700

Via E-mail and United States Mail

Philip G. Villaume
Villaume & Schiek, P.A.
BLN Office Park
2051 Killebrew Drive
Bloomington, MN 55425

Re: *Michael Brodkorb v. Minnesota Senate and Cal Ludeman*
Ramsey County Case No.: 62-CV-12-5979

Dear Mr. Villaume:

As I believe you are aware, the Minnesota Senate has retained Dayle Nolan, an attorney in the Larkin, Hoffman, Daly & Lindgren law firm, with regard to the claims made by Mr. Brodkorb. Accordingly, Ms. Nolan will be defending against all claims made in the above-referenced Complaint.

Very truly yours,

A handwritten signature in black ink, appearing to read "Alan J. Gilbert".
ALAN I. GILBERT
Solicitor General

(651) 757-1450 (Voice)
(651) 282-5832 (Fax)

cc: Ms. Dayle Nolan, Esq. (via e-mail and United States Mail)